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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/730,574 | 12/08/2003 | Kenneth J. Juncker | AG-118US | 3069 |

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EXAMINER

MAMMEN, NATHAN SCOTT

ART UNIT PAPER NUMBER

3671

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/730,574

Applicant(s)

JUNCKER, KENNETH J.

Examiner

Nathan S Mammen

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>6/1/04</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1, 18-22 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,543,861 in view of U.S. Patent No. 5,373,902 to Lindblom.

The '861 patent discloses a track apparatus comprising an idler assembly having the tensioning device, as now instantly claimed. What the '861 patent does not disclose is that the track apparatus is used on a soil stabilizer device. The Lindblom '902 patent teaches a soil stabilizer having a stabilizer frame (12), a rotor (14) rotatably mounted to the stabilizer frame and moveable with respect to the ground surface such that the rotor may engage various depths of the earth, and a powered rotatable axle (not labeled- mounting the drive wheels) for providing movement of the soil stabilizer. Furthermore, it is well known in the agricultural and construction equipment art to utilize tracks in place of wheels in order to increase traction and reduce compaction. Therefore, it would have been obvious to one having ordinary skill in the art

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to use the track assembly disclosed by the '861 patent on a soil stabilizer like that of the Lindblom '902 patent.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-17, 23-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,373,902 to Lindblom in view of U.S. Patent No. 5,829,848 to Kelderman, cited by Applicant.

The Lindblom '902 patent discloses a soil stabilizer for treating a ground surface. The stabilizer comprises a stabilizer frame (12), a rotor (14) rotatably mounted to the stabilizer frame and moveable with respect to the ground surface such that the rotor may engage various depths of the earth, and a powered rotatable axle (not labeled- mounting the drive wheels) for providing movement of the soil stabilizer. What the Lindblom '902 patent does not disclose is that the soil stabilizer is supported for movement by a track apparatus. Instead, the Lindblom '902 patent utilizes wheels. The Kelderman '848 patent teaches that it is known to provide "vehicles of various types" (see title) with a track apparatus for support and movement. The track apparatus of the Kelderman '848 patent is designed to replace wheels. The advantages of tracks over wheels are notorious to those having ordinary skill in the art, including the reduced ground pressure and increased traction. It would have been obvious to one having ordinary skill in the

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art at the time the invention was made to provide the soil stabilizer of the Lindblom '902 patent with the track apparatus of the Kelderman '848 patent in order to reduce the ground pressure and increase the traction of Lind blow's soil stabilizer.

The track apparatus of the Kelderman '848 patent comprises a continuous flexible track (219), an axle wheel (425), and an apparatus frame (442) for mounting the axle wheel. The apparatus frame (442) includes apparently welded sections (22, 23), thus it constitutes a uni-body construction. The apparatus frame has a fixed mount (21) for the axle wheel and a fixed mount (24, 210) for an idler wheel. Bogie wheels (102) are rotatably mounted (at 213) to a fixed-mount axis. An idler-mounting bracket (26) is pivotally mounted to another fixed mount and pivots relative to a fixed mount axis (27). The bracket has an idler mount (216, 214) defining an idler mount axis at which another idler wheel (102) is rotatably mounted in various positions. The idler wheels include leading and trailing idler wheels. The apparatus frame receives the axle wheel. The apparatus frame has a spindle hub for receiving the rotatable axle. See Fig. 3. The flexible track includes spaced lugs (220) on the inward surface, and the axle wheel portion comprises radially extending portions (51) with peripheral portions having outwardly-facing lug-engagement surfaces (53). The outer rip has a plurality of spaced openings (between the peripheral portions).

Regarding claims 3-6: The soil stabilizer of the Lindblow '902 patent has a pair of front and rear wheels, and it would be obvious to replace part or all of the wheels with a track apparatus as taught by the Kelderman '848 patent. The soil stabilizer includes a mixing chamber (18) with a bottom surface and a rear exit.

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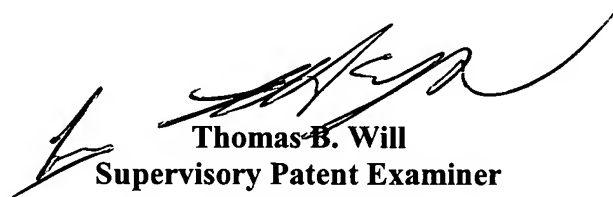
Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (571) 272-6991.

The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (571) 272-6998. The fax number for this Group is (703) 872-9306.



Thomas B. Will
Supervisory Patent Examiner
Group 3600

NSM
4/7/05

Nathan S. Mammen